THE BOMBAY RENT-FREE ESTATES ACT, 1852.

CONTENTS.

PREAMBLE.

SECTIONS.

1. [*Repealed.*]
2. Power to appoint Inam Commissioner, with Assistants and establishments.
3. Duties how discharged.
4. Determination of titles of claimants to exemption.
5. Powers to enforce attendance of witnesses to take evidence, etc.
   Complaints against, or appeals from, proceedings of Commissioner and Assistants.
6. Punishment of misconduct of officers on Commission.
   Extortion defined.
   Other prosecution not barred.
7. [*Repealed.*]

SCHEDULE A.

Rules for defining the Duties of each Inam Commissioner and his Assistants.

RULES.

1. Duty defined.
2. Appeal from orders of Assistant Commissioners and Commissioner.
3. Duty to receive statements of title and record evidence in support.
4. Statements how received.
5. Notice when to issue.
   Contents of notice.
6. Service of notice.
7. Posting notice when land-holder not found.
8. Attachment by whom enforced.
9. Procedure on receipt of statements and evidence of title.
10. Procedure on failure of notice to procure attendance.
11. Removal of attachment.
    Restoration to proprietors of rents collected.
12. Copies of decision to be delivered to claimants.
    Copies of decisions made in their absence how dealt with.
13. Execution of decision.
14. Procedure in appeal.
    Setting aside decrees.

SCHEDULE B.

Rules for the Adjudication of Titles to Estates claimed as Inam or exempt from payment of Land-revenue.

RULES.

1. Continuance of inams already declared permanent.
Disposal of question as to competency to make declaration.

2. Continuance of holding under sanad declaring it hereditary, where granted by competent authority,
and conditions of tenure legally observable;
and grant not revoked, disallowed or altered.

3. Continuance of holdings exempt or partially exempt for sixty years before British rule.

4. Continuance of holdings so exempt for forty years.
Authorised possession how proved.
Prescriptive right of claimant when admissible.
Introduction of British Government when to date—
in territories late of Peshwa,
in independent principality or jagir more ancient than Peshwa's government.
Disposal of question as to date of East India Company acquiring Government.

6. Land resumable on demise of incumbent.
Extension of life tenure of holding of which incumbent died before British rule.
Resumption of land held by fraud.

7. Continuance of holdings for support of mosques, temples, etc.
Corresponding provisions of rule 2 applied.
Effect of enjoyment for forty years where no proof of grant forthcoming.
Prescriptive title when admissible where records do not go back enough to test enjoyment for forty years.
Rule where not applicable.
Adjudication of certain claims coming under rule.

8. Continuance of holdings by official tenure meant to be hereditary.
Corresponding provision of rule 2 applied.
Continuance of inam enjoyed as official holding during period covered by evidence though grant or recognition not proved.
Exemption from rule of emoluments for certain services to State.
Length of enjoyment by itself does not entitle to benefit of rule.
Benefit of preceding rules when allowable.

9. Provision for widows of last incumbents of resumed holdings.
Continuance to widow and sole heir of holder of hereditary personal inam.

10. Exception of certain tenures from application of rules.

11. Modification in favour of claimants and interpretation of rules.

ACT No. XI OF 1852.[1]

[THE BOMBAY RENT-FREE ESTATES ACT, 1852.]

[*13th February 1852.*]

Repealed in part by Act 16 of 1875;
" " " " " 10 of 1876;
" " " " " 4 of 1894.

Adapted and modified by the Adaptation of Indian Laws Order in Council.

An Act for the Adjudication of Titles to Certain Estates claimed to be wholly or partially Rent-free in the Presidency of Bombay.

WHEREAS in the territories of the Dekkhan, Khandesh and Southern Marátha Country, and in other districts more recently annexed to the Bombay Presidency, claims against Government on account of inàms and other estates wholly or partially exempt from payment of land-revenue are excepted from the cognizance of the ordinary Civil Courts [2]* * *; Preamble.

and whereas it is desirable that the said claims should be tried and determined without further delay;

It is declared and enacted as follows:—

1. [*Rules not applicable to certain districts.*] *Rep. Act IV of 1894.*

2. The [3][Provincial Government] may appoint in any zila or other division of the territories subject to the Presidency of Bombay, which were not brought under the general Regulations of Government by [4]* * * Regulation [5]XXVIII of 1827, an Inám Commissioner with so many Assistants, and such subordinate establishment, as may be necessary for the purposes hereinafter mentioned. Power to appoint Inám Commissioner with Assistants and establishment.

3. The duties of each Inám Commissioner and his Assistants shall be discharged according to the rules in Schedule A annexed to this Act. Duties how discharged.

4. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act. Determination of titles of claimants to exemption.

5. Each Inám Commissioner and his Assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by law vested in the ordinary Civil Courts; and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts and other like matters connected with cases under cognizance by any Powers to enforce attendance of witnesses, to take evidence, etc.

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[1] As to the application of this Act, *see* the Bombay Land-revenue Code, 1879 (Bom. 5 of 1879), section 127.

The short title was given by Bom. 2 of 1921.

[2] The words and figures "and incapable of being justly disposed of under the rules for the determination of titles and the rules of procedure contained in Chapters IX and X of Regulation XVII of 1827 of the Bombay Code and their supplements" were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

[3] The words "Provincial Government" were substituted for the words "Governor of Bombay in Council" by the Adaptation of Indian Laws Order in Council.

[4] The words "the said" were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

[5] Bom. Reg. 28 of 1827 was repealed by the Repealing Act, 1873 (12 of 1873).

one of the said officers, his office shall be held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zila or district in which his office from time to time shall be established :

Complaints against, or appeals from proceedings of Commissioner and Assistants.

Provided that all complaints against, or appeals from, the proceedings of the Inám Commissioner or any of his Assistants in exercise of the authority conferred on them respectively by this section, shall be made under the second rule of Schedule A annexed to this Act : and shall not be cognizable by any other authority or in any other manner than as therein specified.

Punishment of misconduct of officers on Commission.

6. Bribery, extortion, and generally all acts of abuse or misapplication of authority, or other misconduct, committed by any officer belonging to the establishment of the Inám Commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion.

Extortion defined.

Other prosecution not barred.

And no penalty or punishment adjudicated under this clause shall preclude any other civil prosecution to which the offender may be liable.

7. [*Jurisdiction of Courts barred.*] *Rep. Act X of 1876.*

SCHEDULE A.

RULES FOR DEFINING THE DUTIES OF EACH INAM COMMISSIONER AND HIS ASSISTANTS.

Duty defined.

1. The duty of the Inám Commissioner and his Assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons holding or claiming against Government the possession or enjoyment of ináms or jágirs, or any interest therein, or claiming exemption from the payment of land-revenue, and generally to act according to the instructions [1][of the Provincial Government] in all matters not specifically provided for in this enactment.

Appeal from orders of Assistant Commissioners and Commissioner.

2. All orders of the Assistant Commissioners shall be appealable to the Inám Commissioner, who shall also have the authority of revising and of modifying, reversing or annulling, if necessary, their orders and proceedings, and the orders and proceedings of the Inám Commissioner shall be in like manner appealable to, and subject to modification, reversal or annulment by, [2][the tribunal constituted under section 296 (2) of the Government of India Act, 1935], [3][orders of which] shall in every case be final.

Duty to receive statements of title.

3. The Inam Commissioner or his Assistants shall receive from the persons, holding or claiming to hold lands or any interest therein exempt from the payment

[1] The words " of the Provincial Government " were substituted for the words " of Government " by the Adaptation of Indian Laws Order in Council.

[2] The words, figures and brackets " the tribunal constituted under section 296 (2) of the Government of India Act, 1935 " were substituted for the words " the Governor of Bombay in Council ", *ibid.*

[3] The words " orders of which " were substituted for the words " whose orders ", *ibid.*

of revenue, statements explaining the nature of the title by which the lands or interests are so held, and shall take and record the evidence offered in support of such statements. and record evidence in support.

4. These statements may be received either directly by the officers of the Inám Commission, or through the medium of the revenue-authority of the táluqa in which the land or interest so held or claimed as exempt is situated, or in which the alleged proprietor resides, without any previous procedure, except a general invitation to such landholders of a district who shall hold or claim to hold lands exempt as aforesaid to state the nature of their titles. Statements how received.

5. But, when such general invitation is not sufficiently attended to, a notice may be issued to any party holding or claiming to hold any lands or any interest therein wholly or partially exempt as aforesaid, requiring him, personally or by his agent, to show his title. Notice when to issue.

The notice issued in such cases shall state the nature of the investigation which is intended, and shall call upon the alleged proprietor of the exempt lands or interest, held or claimed to be held exempt as aforesaid, to attend either personally or by an authorized agent, at a specified place, and within a specified period (which shall never be less than two months from the date of the notice being served), to explain the nature of his title to hold such lands or interest exempt as aforesaid, and to produce all the evidence forthcoming to prove it. Contents of notice.

The notice shall further explain that a failure to comply with its terms will render the land, or interest to which it relates, liable to attachment.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or, in default of such, upon the person in charge of the land or interest. Service of notice.

7. If such persons cannot be found, a notice shall be posted in the office of the Native Revenue-officer of the district, and in the chauri, or most public place of the village where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally, or by his agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and, on failure of the appearance of a claimant, the land or interest shall be liable to attachment. Posting notice when landholder not found

8. The attachment provided for by rules 5 and 7 shall be enforced by the Collector or chief revenue-authority of the district in which the land to which it relates is situated, at the written requisition of the Inám Commissioner or his Assistant, which shall be a sufficient warrant to the Collector for the attachment of the land, and for the collection of the rents accruing therefrom on account of Government during its attachment. Attachment by whom enforced.

9. As soon as possible after the receipt of the statements in each district and of the evidence by which they are supported, they shall be tested by the entries in the Government accounts and State records, and by any other evidence procurable, whether in favour of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption or full or partial assessment of the lands. Procedure on receipt of statements and evidence of title.

Procedure on failure of notice to procure attendance.

10. In cases where the notices provided for in sections 5 and 7 fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

Removal of attachment.

Restoration to proprietors of rents collected.

11. An attachment enforced under rule 8 shall be removed by the Collector or chief revenue-authority by whom it was made, on receipt of a communication from the Inám Commissioner or his Assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be restored to the alleged proprietor, except under the general or special instructions [1][of the Provincial Government].

Copies of decisions to be delivered to claimants.

Copies of decisions made in their absence how dealt with.

12. Certified copies of decisions, made according to the provisions of rule 9, shall be delivered, as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant according to the provisions of rule 10 shall be sent to the mámlatdár, or other revenue-manager of the táluq in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

Execution of decision.

13. Decisions affecting any lands or any interests therein passed under this enactment shall be carried into execution by the Collector or chief revenue-authority of the district in which the lands to which they relate are situated at the requisition of the Inám Commissioner or his Assistant, in any manner which may, from time to time, be prescribed by [2][the Provincial Government].

Procedure in appeal.

Setting aside decrees

14. In all cases where a person may be desirous of appealing against any decision of the Inám Commissioner or his Assistants, he shall apply by a petition, addressed to the authority by whom, according to rule 2, his appeal is cognizable, which petition shall be presented to such authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided that no decree passed by the Inám Commissioner or any of his Assistants shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

SCHEDULE B.

RULES FOR THE ADJUDICATION OF TITLES TO ESTATES CLAIMED AS INAM OR EXEMPT FROM PAYMENT OF LAND-REVENUE.

Continuance of ináms already declared permanent.

1. All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued hereditarily or in perpetuity exempt, wholly or partially, from the payment of revenue, are to be so continued according to the purport of such declaration.

[1] The words "of the Provincial Government" were substituted for the words "of Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "the Provincial Government" were substituted for the words "the Governor of Bombay in Council", *ibid.*

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to [1][the Provincial Government], to [2][which] a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of [1][the Provincial Government], shall decide accordingly. Disposal of question as to competency to make declaration.

2. Any land held under a sanad declaring it to be hereditary shall be so continued according to the terms of the sanad. Continuance of holding under sanad declaring it hereditary,

Provision 1st.—Provided that the grant was either made, or specifically recognised, by authority competent to alienate Government revenue in perpetuity, the question of which recognition and competency is to be referred to and determined [3][by the Provincial Government] in the manner prescribed by provision 1st, rule 1. where granted by competent authority.

Provision 2nd.—And provided that there be nothing in the conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency. and conditions of tenure legally observable;

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority. and grant not revoked, disallowed or altered.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent or male heir of the body of such grandson, of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only. Continuance of holdings exempt or partially exempt for sixty years before British rule.

4. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son, of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son. Continuance of holdings so exempt for forty years.

Provision 1st.—The authorized possession contemplated by rules 3 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or paramount Power. The mere entry of the holding, as continued in the genuine accounts of the district-officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of "uninterrupted" and "authorized" so far as regards the purposes of this rule: Provided only that there are no entries in the Collectorate-accounts which show that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or paramount Power. Authorised possession how proved.

[1] The words "the Provincial Government" were substituted for the words "the Governor of Bombay in Council" and "the said Governor in Council" by the Adaptation of Indian Laws Order in Council.

[2] The word "which" was substituted for the word "whom", *ibid.*

[3] The words "by the Provincial Government" were substituted for the words "by Government", *ibid.*

Prescriptive right of claimant when admissible.

Provision 2nd.—If there be no evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of rules 3 and 4 respectively, his prescriptive right shall be admitted.

Introduction of British Government when to date—in territories late of Peshwa.

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Government or paramount authority over each district as regards its inams. In the territories ceded by or conquered from the Peshwa, therefore, whether khalsat mahals or saranjams, etc., held exclusive of inams, etc., the introduction of the British Government will date from the close of that of the Peshwa.

in independent principality or jagir more ancient than Peshwa's government.

But in case of the lapse of an independent principality, or of a jagir more ancient than the Peshwa's government, and over the inams of which he did not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the districts may have come into the hands of the Company;

Disposal of question as to date of East India Company acquiring Government.

and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any district came into their hands, such question shall be referred to and determined [1][by the Provincial Government] in the manner prescribed by provision 1st, rule 1.

Land resumable on demise of incumbent.

[2]6. Land held as wholly exempt from payment of revenue, or on partial assessment, the possession of which is not continuable under the preceding rules, is to be resumed on the demise of the incumbent.

Extension of life tenure of holding of which incumbent died before British rule.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence.

Resumption of land held by fraud.

Provision 2nd.—When land is evidently held by fraud recently committed (as when an inam which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended inam is found to have originated since the introduction of this Government with the connivance of district or village-officers), it shall be at once resumed, not being continuable under this or any of the preceding rules.

Continuance of holdings for support of mosques, temples, etc.

7. All lands held for the support of mosques, temples or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Corresponding provisions of rule 2 applied.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

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[1] The words "by the Provincial Government" were substituted for the words "by Government" by the Adaptation of Indian Laws Order in Council.

[2] There is no rule numbered 5.

Provision 4th.—When there is no proof forthcoming to show whether or not an inam, coming under the provisions of this rule, was granted, or even specifically recognized, by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the present Government, it shall be permanently continued, and enjoyment proved by the mere entry of the inam, as continued in genuine accounts of the district-officers (even in those not passed by the Government of the time being), is to be considered sufficiently "uninterrupted" to give an inam the benefit of this provision, if there be no entries in the Government accounts which show that it must have been unauthorized by them. Effect of enjoyment for forty years where no proof of grant forthcoming.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in provision 4th as establishing full prescriptive title in such inams, still, if so far as they do go, they are not opposed to the claimant's assertion that sufficient enjoyment has taken place, the prescriptive title of the inam shall be admitted according to his assertions, unless there be other evidence forthcoming to disprove them. Prescriptive title when admissible where records do not go back enough to test enjoyment for forty years.

Provision 6th.—The peculiar advantages of this rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the rules for personal claims. Rule where not applicable.

Provision 7th.—When claims of the denomination coming under this rule are found to be unsupported by proof of original valid title and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to rule 6. Adjudication of certain claims coming under rule.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore even though there be no sanads declaring it to be so,—for instance, inams which form the authorized emoluments of any hereditary office, as of kazis, village joshis, etc., and are not merely personal,—are to be continued permanently. Continuance of holdings by official tenure meant to be hereditary.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming. Corresponding provision of rule 2 applied.

Provision 4th.—When there is no proof forthcoming to show whether or not an inam, coming under the provisions of this rule, was granted or even specifically recognised by competent authority, still, if it has been undisputedly enjoyed as an official, and not merely personal, holding from the earliest period to which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper. Continuance of inam enjoyed as official holding during period covered by evidence though grant or recognition not proved.

Provision 5th.—The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desais, sardesais, nadgaudas, deshpandes, patels, kulkarnis, mahars, talavaras, whose claims are to be disposed of according to the rules which are or may be established for the regulation of such holdings. Exemption from rule of emoluments for certain services to State.

Length of enjoyment by itself does not entitle to benefit of rule.

Provision 6th.—It is to be understood that mere length of enjoyment of land as inam by an official person is not of itself sufficient to entitle a claim to be brought under this rule.

Benefit of preceding rules when allowable.

Provision 7th.—If a holding claimed under this rule be found incapable of permanent continuance under it, the claimant shall be allowed the advantages of any of the preceding rules of this Schedule which may be applicable to his case.

Provision for widows of last incumbents of resumed holdings.

9. On the resumption of any lands under the rules of this Schedule, a moiety or other portion may be continued to the widows of the last incumbents during their lives, in cases of proved poverty and destitution.

Continuance to widow and sole heir of holder of hereditary personal inam.

Provision 1st.—In the case of a holding which is recognizable as an hereditary personal inam, the widow of a proprietor who dies without surviving male issue, or other heirs to whom his inam will of necessity descend, is by right his sole heir, and during her life the inam cannot be regarded as having lapsed to [1][the Crown]: it should, therefore, in such a case, be continued undiminished during the widow's life.

Exception of certain tenures from application of rules.

10. These rules shall not be necessarily applicable to jagirs, saranjams or other tenures for service to [1][the Crown], or tenures of a political nature, the titles and continuance of which shall be determined as heretofore under such rules as [2][the Provincial Government] may find it necessary to issue from time to time.

Modification in favour of claimants and interpretation of rules.

11. Any of these rules may be relaxed in favour of claimants under instructions from [3][the Provincial Government], in [4][which] shall also be vested the power of interpreting the precise meaning of any of the rules respecting which a question may arise.

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[1] The words "the Crown" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "the Provincial Government" were substituted for the word "Government", *ibid.*

[3] The words "the Provincial Government" were substituted for the words "the Governor of Bombay in Council", *ibid.*

[4] The word "which" was substituted for the word "whom", *ibid.*